

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CARL SCAGGS and NELLIE SCAGGS,

Plaintiffs,

v.

3M COMPANY, AS SUCCESSOR BY
MERGER TO MINNESOTA MINING &
MANUFACTURING COMPANY AND/OR
ITS PREDECESSORS/SUCCESSORS IN
INTEREST

and

MINE SAFETY APPLIANCES,

Defendants.

Cause No. 4:08-CV-01163 ERW
JURY TRIAL DEMANDED

**MSA'S EMERGENCY MOTION TO COMPEL DISCLOSURE OF SETTLEMENT
AMOUNT PROMISED OR RECEIVED BY PLAINTIFFS FROM 3M COMPANY
AND FOR REDUCTION OF ANY POTENTIAL JUDGMENT AGAINST MSA**

Defendant, Mine Safety Appliances Company ("MSA"), by and through its attorneys, and for its Emergency Motion to Compel Disclosure of Settlement Amount Promised or Received by Plaintiffs From 3M Company and for Reduction of Any Potential Judgment Against MSA, states as follows:

Plaintiffs brought this lawsuit against Defendants MSA and 3M Company alleging that respirators manufactured by both defendants failed to perform properly, thereby causing or contributing to cause Plaintiff Carl Scaggs to develop silica-induced airway obstruction. Defendant 3M has now reached a settlement agreement with Plaintiffs.

In MSA's Answers and Defenses, MSA affirmatively plead its right to contribution in the event that Plaintiffs reached a settlement agreement with 3M Company, stating:

To the extent that any party or entity has settled or may settle in the future with any plaintiff, Mine Safety Appliances Company is entitled to an appropriate credit or reduction of any judgment against it.

See MSA's Answers and Defenses, Defenses at ¶19 (Doc. #6).

Missouri law provides that any judgment on behalf of Plaintiffs entered against MSA in this matter shall be reduced by the amount of the settlement proceeds paid or to be paid to Plaintiffs by 3M. *See* RsMO §537.060.

Disclosure of the amount Plaintiffs have received or will receive from 3M is critical for MSA to meaningfully evaluate the settlement value of this case. Last week, Plaintiffs informed MSA that their offer to settle this case will remain open only until this Friday, October 8, 2010. However, as MSA remains in the dark as to the potential reduction or set-off it will receive in the event that this case proceeds to trial and judgment is entered against MSA, MSA is at a loss as to how to value this case.

In accordance with Eastern District of Missouri Local Rule 37-3.04(A), in the afternoon on Friday, October 1, 2010, the undersigned, counsel for MSA, conferred in good faith by telephone with Mike Martin, counsel for Plaintiffs, regarding disclosure of the settlement amount Plaintiffs have received or will receive from 3M. Mr. Martin would not disclose the settlement amount and stated his objection to the instant motion to compel said settlement amount. As a result, MSA and Plaintiffs are unable to reach an accord on this matter.

WHEREFORE, so that MSA may meaningfully evaluate the settlement value of this matter, MSA respectfully requests that an order be entered compelling Plaintiffs to disclose the amount of settlement promised or received by 3M. As Plaintiffs have informed MSA that their offer to settle this case will remain open only until this Friday, October 8, 2010, MSA requests this information immediately. In addition, in the event this matter proceeds to trial, MSA

requests a reduction or set-off of any judgment against it equal to the amount of the settlement promised or received by Plaintiffs from 3M.

/s/ W. Jeffrey Muskopf

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PROOF OF SERVICE

I hereby certify that on October 4, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following parties:

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/s/ W. Jeffrey Muskopf